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ERIK C. SCHYLANDER

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS

P.O. BOX 3001

BRIARCLIFF MANOR, NY 10510

EXAMINER

BOCCIO, VINCENT F

ART UNIT

PAPER NUMBER

2158

MAIL DATE

DELIVERY MODE

08/05/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |  |  |
|------------------------------|--------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>09/315,707 | <b>Applicant(s)</b><br>SCHYLANDER, ERIK C. |  |
|                              | <b>Examiner</b><br>Vincent Boccio    | <b>Art Unit</b><br>2158                    |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on Brief 11/12/2003, Rev-Petition 3/7/05.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 9-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-51 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

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**DETAILED ACTION**

The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 2158

**Response to Appeal Brief**

1. In view of the brief filed on 11/12/2003, PROSECUTION IS HEREBY REOPENED. The reason for opening prosecution is mainly the present requirements at the board of appeals and further the examiner would like to clarify some grounds with supporting teachings and some new grounds of rejection based on 101 statutory considerations.

To avoid abandonment of the application, appellant must exercise one of the following two options:

(1) file a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,

(2) initiate a new appeal by filing a notice of appeal under 37 CFR 41.31 followed by an appeal brief under 37 CFR 41.37. The previously paid notice of appeal fee and appeal brief fee can be applied to the new appeal. If, however, the appeal fees set forth in 37 CFR 41.20 have been increased since they were previously paid, then appellant must pay the

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difference between the increased fees and the amount previously paid.

A Supervisory Patent Examiner (SPE) has approved of reopening prosecution by signing below:

/Mohammad Ali/

Supervisory Patent Examiner, Art Unit 2158

### ***Response to Arguments***

2. Applicant's arguments filed 5/12/2009 have been fully considered but they are not persuasive.

{A} In re pages 5-6, applicant states,

"For example, David does not teach or suggest the feature: "wherein the variable control data comprises at least one conditional instruction, wherein each instruction of the at least one the conditional instruction includes an operation code and operands, wherein the operation code includes an operation portion denoting an operation and a condition portion denoting a condition, wherein the operation is to be executed if the condition is TRUE, wherein the operation is not to be executed if the condition is FALSE, and wherein the operation is adapted to be performed in conjunction with at least one of said operands".

and

"However, the conditional instruction syntax shown in FIG. 6 of David does not include **"an operation portion denoting an operation" to be performed in dependence on whether operation to be executed or FALSE**, as required by claims 9, 27, and 40. In David's scheme, the operation to be executed is not contained within the conditional instruction shown in FIG. 6, but is instead present in another instruction in another list. In the conditional instruction shown in FIG. 6, the operation to be executed is in another list to execute identified by "true\_list\_offset" if the operation is TRUE, and identified by "false\_list\_offset" if the operation is FALSE. Appellants note that the language of claims 9, 27, and 40 requires that "an operation portion denoting an operation" be included in the same instruction that comprises "a condition portion denoting a condition", which David does not teach or suggest. Thus, claims 9, 27, and 40 are not anticipated by David under 35 U.S.C. 102(b), because David does not teach what claims 9, 27, and 40 require.

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In response, the If then Else, clearly represents a Conditional, met by IF and an operation that is done upon a True conditional being met and an Else, which is also a conditional operation upon a False condition (see Page 9, line 10, IF THEN ELSE type construction, also see Pages 8 and 10, comparisons and operations met by (If {cond.} then (Operation), upon true to operation in the operation portion of the If Cond. then Operation), at best the operation is an Offset operation, upon a true condition, else represent another operation, still reads on the claims.

{B} In re pages 9-10, applicant states, "the feature of claims 10, 29, and 41: "wherein the at least one instruction is embedded in a Command List comprising a Command List Header which precedes the at least one instruction, and wherein the Command List further comprises an unconditional goto which points to a next list to be executed following execution of said Command List".

Additionally, Appellants contend that the rejection of claims 10, 29, and 41 is improper because the Examiner has not provided any argument demonstrating the preceding feature of claims 10, 29, and 41. Indeed, the Examiner has not even discussed the preceding feature of claims 10, 29, and 41

In response, the examiner has supported the Official Notice with some references, see conclusion and art provided, which teaches that the GOTO is known as of the 60 s, used alone and not associated with an If then is an Unconditional GOTO.

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{C} In re pages 10-20, applicant states, "Since claims 12- depends from claim 9, which Appellants have argued *supra* to be patentable under 35 U.S.C. § 102(b) and 35 U.S.C. § 103(a)".

In response the examiner will address the independent claims and provide more details on the dependent claims.

The examiner of record suggests a request for an interview to discuss the merits of the rejection vs. disclosure.

**Claim Rejections - 35 USC § 101**

1. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 9-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

**Under: (c) why the claimed invention would impermissibly cover every substantial practical application of, and thereby preempt all use of, an abstract idea, natural phenomenon, or law of nature. See MPEP 7.05.01 35 USC 101, Non-Statutory, Part C.**

Claim 9, is directed to a carrier medium, comprising:

o video related **user data (1) control data (2)**, in digital form; wherein the control data enables playback control of the user data, wherein the control data comprises:

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- o **play control data** which defines user data items of the user data which are playable;
- o **selection control data** for enabling the user to select user data and control reproduction of the selected user data;

and

- o **variable control data** for operating on user and system variables,
- o wherein **the variable control data comprises at least one conditional instruction**,
- o wherein **each instruction** of the
  - o at least one the **conditional instruction**
  - o includes **an operation code and operands**,
  - o wherein **the operation code includes**
    - o an operation portion denoting an operation;
  - and
  - o **a condition portion denoting a condition, wherein the operation is to be executed if the condition is TRUE, wherein the operation is not to be executed if the condition is FALSE, and wherein the operation is adapted to be performed in conjunction with at least one of said operands.**

**Met by:**

**If condition=True Then Do an "operation",  
DO {IF TRUE} or Do Not Do, If False, which  
may include, an Else (Do If False)**

The rational of this 101 non-statutory rejection set fourth above, is that the, "If true/False condition and operations, apply to every piece of data and every

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possible operation, interactivity, program flow, as claimed.

Therefore, it is deemed by the examiner that, the If, True and False, condition Test and the corresponding operations as claimed,

o SINCE Encompass ALL, user and system variables, are deemed would impermissibly cover every substantial practical application of THE IF THEN CONDITION & OPERATION, actions and therefore the claimed are deemed Non-Statutory in view thereof, Supra.

Further as evidenced in view of the claims as recited are only limited to Any/All Conditions Testing and ANY/ALL Operations, to be performed on any user and/or system variables.

Claims 10-26 are also deemed to encompass all possible operations, related to program operation,

- o unconditional Go To, between Lists, pointing to a Next List, claim 10;

e.g. Go-to or the known variants, jumping, return, operations/statements, embedded programs code are deemed generic structures, deemed to encompass all structures. Therefore, are also deemed Generic and therefore, encompass all practical applications of the structures and operations, therefore, are deemed to be NON-STATUTORY subject matter.

- o Next List being a Command, claim 11
- o Command List does not include anything other than a GOTO, claim 12,

Notel: "Runs Through Code & Only Jumps At End"

Note: Acting Like, i.e. a Finite State Machine

- o Condition w/indices, claim 18,  
Arithmetic, claim 19, i.e. {e > 0}, claim 20  
and/or i.e. {E1 > E2, claim 21, are all deemed  
generic conditions and operations.



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All dependent claims are deemed to be generic in nature and encompass all and are deemed would impermissibly cover every substantial practical combination and applications, as claimed.

**Claim Rejections - 35 USC § 101**

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 9-26 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter

Claims 9-26 are directed to a RECORD CARRIER, in light of the specification there is one clear example e.g. a CD, this example is statutory with respect to the CD is deemed to be a statutory medium, under current case law and interpretation.

The claims in light of the specification in combination with Extrinsic Definitions imparted from other sources, appears to widen the scope of the Record Carrier, to be in question as to covering Signals. It, appears clear that there are other definitions to the limitation that can be included as deemed intended as defined by the specification, as recited the Record Carrier, renders the claims Non-Statutory.

***Upon an argument from applicant, defining the scope of the Record Carrier, to be limited to Statutory Types, rendering the scope of claims 9-26, to be limited to Statutory subject matter, the examiner will drop the 101 rejection.***

Upon the statement to the above affect: The scope as disclosed, page 4, lines 1-5, {see "Record carrier 1 is e.g. an optical disc"}, this disclosed language is deemed to include other conventional and viable types, thereby defining the scope of the recited record carrier, to be within what is deemed

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STATUTORY, as understood and defined by case Law and 101 guidelines.

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a) because they fail to show "the claimed GOTO and Unconditional GOTO with respect to Fig. 9, traversing the lists" as described in the specification. Any structural detail that is essential for a proper understanding of the disclosed invention should be shown in the drawing. MPEP § 608.02(d). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet"

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or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 9-51 are rejected under 35 U.S.C. 102(b) as anticipated by David(WO 98/09290 or, in the alternative, under 35 U.S.C. 103(a) as obvious over David(WO 98/09290.

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Regarding claim 9, David discloses and meets the limitations associated with a record carrier, wherein the control data comprises:

- o a record carrier (Fig. 1, page 1, CD DISC, digital), comprising video-related user data and control data in digital form, wherein the control data enables playback control of the user data (page 7, User Variables & System Variables), and wherein the control data comprises:
  - o play control data (page 6, Play List) which defines user data items of the user data which are playable;
  - o selection control data for enabling the user to select user data and control reproduction of the selected user data (see Page 4, lines 30-, "a user can give input while the display item is displayed", also see Page 4, Previous, Return & Next);

and

- o variable control data for operating on user and system variables (met by If cond. then operation),

wherein the variable control data comprises at least one conditional instruction, wherein each instruction of the at least one the conditional instruction includes an operation code and operands, wherein the operation code includes an operation portion denoting an operation and a condition portion denoting a condition, wherein the operation is to be executed if the condition is TRUE, wherein the operation is not to be executed if the condition is FALSE, and wherein the operation is adapted to be performed in conjunction with at least one of said operands (see If then Else, condition and operations, page 9, If then else).

Also see user data items which are playable

(page 7, "language", "subtitle", "rating", "There are 32

read **re-writable variables numbered 0-31**", "**initialized to zero**", therefore set for a default or initial setting, which

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dictate initial, when modified therefore, variable, dictate different functionalities or selections, presentations, such as language, branching thru interactive).

On the alternative, the examiner takes official notice, that conditional as well as arithmetic etc.... programming data structures can be used together, for example in "If Then Else", "True - False", conditions associated with system as well as user variables {arithmetic as well as others}, can be used and provides interactive functionality, using play lists and conditional instructions provide for interactive functionality with the user, or interactive playback, using default as well as system variables, etc., if David some how is determined, as applicants states, not to suggest and render inherent the ability to create and use together provides programming functionality elements, as shown suggested by David, as presently claimed, as desired to create a desired interactive sessions,

It would have been obvious to those skilled in the art at the time of the invention with David in from of themselves, with a careful consideration of what David shows, suggests, that since no arguments, or suggestions from David to the contrary, that more complex "If then else", statements as well as other operations as claimed, are considered to be obvious to those

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skilled in the art, to utilize more complex programming data structures, as is obvious to those skilled in the art.

as is well known to those skilled in the art.

Regarding claim 10, David fails to particularly disclose wherein the at least one instruction is embedded in a Command List comprising a Command List Header which precedes the at least one instruction, and wherein the **Command List further comprises an unconditional goto which points to a next list** to be executed following execution of said Command List.

The Goto or Unconditional GOTO, the examiner has supported these teaching in the conclusion section.

To support the Official Notice the examiner cites, the unconditional GOTO is known since the 1960s.

Walden, US 4,180,854, col. 59 etc., which teaches, Two statements are provided for unconditional branching, the GOTO and Computed GOTO. Both statements override the normal sequential order of statement execution by transferring control to a specified statement

Therefore, it would have been obvious to those skilled in the art at the time of the invention to utilize a GOTO or an Unconditional GOTO i.e. not associated with an If then conditional operations to traverse through a program, being conventional and well known and deemed obvious since the claims

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are deemed generic in view of the 101, Non-Statutory, position taken above, would impermissibly cover every substantial practical application.

Regarding 11, 12, 13, David in combination with utilizing a GOTO i.e. conditional, renders obvious the next list can be another Command List, utilizing the GOTO to traverse to and wherein the next list is not another Command List, wherein the Command List does not include any other instruction apart from the unconditional goto.

To further address the recited, does not include any other instruction apart from the unconditional goto, is defined as a program sequence that RUNS through without looping, but, branches only at the end, sometimes referred to as a Finite State Machine, further some subroutines can also have the same data structural operation utilizing only a GOTO at the end, no nested operations is also deemed to be a design choice to those skilled in the art.

Regarding claim 14, David as applied, renders obvious wherein the play control data is embedded in Play Lists, the Play Lists (see Play List and User Interactions, pages 1-2, 4, User Input w/Wait time) comprising at least a Play List Header (Fig. 2 a, "Play List Header") as a first item and at least one Play Item representing playable user data and at least one reference to a further List (see Fig. 2 A, offset, also see Figs. 2 B, 3 a, 3 b, 4 a, 4 b, 5, 6, 7, 8 a, 8 b, 8 c, 9, 10); wherein the selection control data is embedded in Selection Lists, the Selection Lists (Fig. 4 a) comprising at least a Selection List Header (Fig. 4 a, "Selection\_List\_Header"), at

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least one reference corresponding to a user selection, the Headers being mutually different (more than one therefore different); and wherein the Command List includes a reference to a Play List of the Play Lists or a Selection List of the Selection Lists (see Offsets in command, points in Play items, play list offsets).

Regarding claim 15-17, David as applied, renders met or obvious wherein the operation code and operands of each instruction are stored in a contiguous set of bytes (met by If then operations), wherein the at least one instruction includes a plurality of instructions (see If cond. then operation 1, else operations 2 or Fig. 5, Page 9), and wherein the instructions of the plurality of instructions are adapted to be executed in a coordinated fashion in accordance with a computer program based on an algorithm, wherein the operands in a first instruction of the at least one instruction include indices (Condition of the If then includes Indices, utilizing Variables in the If then, such as  $X=2$ ), pointing to elements of an array (X has a value in the array of stored data), wherein the condition denoted in the first instruction includes a dependence one at least one of said indices (see supporting reference Mathematical Structures for Computer Science page 64, If  $n > 10$  then  $y:=100$ , else  $y:=N+1$ ,



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obvious and well known structures deemed inherent if not obvious in view of David).

Regarding claims 20-24, David as applied, renders met or obvious, wherein an index of said indices points to an element E of said array, and wherein the condition is  $E > 0$ ,  $E < 0$ , or  $E = 0$  and wherein a first index of said indices point to a first element  $E_1$  of said array, wherein a second index of said indices point to a second element  $E_2$  of said array, and wherein the condition is  $E_1 > E_2$ ,  $E_1 < E_2$  or  $E_1 = E_2$ , wherein the operation denoted in the first instruction is a logical operation (see David, Page 9, "or, and, EX-OR, assigning values to a variable), wherein the operation denoted in the first instruction is an assignment operation wherein the operands in the first instruction further includes a constant (deemed Inherent, also see Mathematical Structures For Computer Science, page example 31,  $n \geq 10$ , 10 is a constant, as is conventional and obvious) adapted to be inserted by the first instruction into at least one element of said array, wherein the operation denoted in the first instruction is a jump operation (met by either Return, Next and/or Previous, also the GOTO, can be conditional or not), wherein a jump adapted to be executed by the jump operation is a jump to a list adapted to be next executed.

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Regarding claims 25, David as applied, provides for wherein the operation denoted in the first instruction is a wait operation (see page lines 30-, Wait time, during which a user can give input).

Claims 27-51, directed to an apparatus and method are deemed analyzed and discussed with respect to the claims above.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

(1) Java, 2nd Edition, Page 70, states,

**During the 1960s ..... the goto statement that allows the programmer to specify a transfer of control to one of a very wide range of possible destinations in a program.**

The goto is a branching or jumping statement that directs the flow of a program, as is conventional and well known in the art, wherein the GOTO used alone with being a Non-Conditional, is known as the claimed Unconditional Goto, normally at the end of a series of code to either return or direct program flow to another part of the programming.

(2) Walden, US 4,180,854, teaches the GOTO, unconditional, also a GOSUB or Call, col. 41, Col. 59

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The examiner suggests to Text Search in view of the large number of pages.

"Two statements are provided for unconditional branching, the GOTO and Computed GOTO. Both statements override the normal sequential order of statement execution by transferring control to a specified statement. If the statement to which control is to transfer is not an executable statement, control transfers to the first executable statement following that statement; otherwise control is transferred to the indicated statement."

(3) Mathematical Structures For Computer Science Dated @ 1993, 1987, 1982, pages 63-66, 68-69, 107-109, teaches, If Cond. then Operation, which the condition and operation portions can be Arithmetic, as is conventional.

#### **Contact Information**

Any inquiry concerning this communication or earlier communications should be directed to the examiner of record Vincent F. Boccio whose telephone number is (571) 272-7373.

The examiner can normally be reached on between Monday-Thursday between (7:30 AM to 5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mohammad Ali, can be reached on (571) 272-4105.

The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system:

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"<http://portal.uspto.gov/external/portal/pair>"

Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Vincent F. Boccio/  
Primary Examiner